

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**GLEN D. SMALE and
CARLA J. SMALE, his wife**

v.

LUCENT TECHNOLOGIES, INC.

:
:
:
:
:
:
:

CIVIL ACTION

NO. 02-CV-2721

**DEFENDANT LUCENT TECHNOLOGIES, INC.'S
MOTION TO COMPEL PLAINTIFFS' DISCOVERY RESPONSES**

Defendant, Lucent Technologies, Inc., by and through its attorneys, Kelly, McLaughlin, Foster, Bracaglia, Daly, Trabucco & White, LLP, hereby moves this Honorable Court pursuant to Local Rule 26.1 (g) for an Order compelling Plaintiff to provide full and complete responses to Defendant's discovery requests and Plaintiff's Self-Executing Disclosure Statement, and avers in support thereof the following:

1. By letter dated September 16, 2002, Plaintiffs were served with Defendant Lucent Technologies, Inc.'s Contention Interrogatories and Request for Production of Documents. A true and correct copy of that correspondence is attached hereto as Exhibit "A".
2. Pursuant to Fed.R.Civ.P. 33(b)(3), Plaintiffs were required to provide answers to Defendant's Interrogatories within thirty (30) days.
3. Pursuant to Fed.R. Civ.P. 34(b), Plaintiffs were required to provide a response to Defendant's Request for Production of Documents within thirty (30) days.
4. Pursuant to Fed. R. Civ. P. 26(a) and Section 4:01(a)(1)(D) of the Civil Justice Expense and Delay Reduction Plan of the United States District Court for the Eastern District of Pennsylvania,

the time in which Plaintiffs were to serve their Rule 26(a) and/or Section 4:01(a)(1)(D) disclosures has long since expired.

5. To date, Plaintiffs have failed to provide any answers to Defendant's outstanding discovery requests and have not provided Defendant with its self-executing disclosures.

6. Defendant's good faith efforts to resolve this discovery dispute by correspondence to counsel for Plaintiffs are detailed in the Certification pursuant to Local Rule 26.1(f), attached hereto as Exhibit "B".

7. Defendant is prejudiced by Plaintiffs' failure to provide responses to outstanding discovery requests and to provide self-executing disclosure as required by the Federal Rules of Civil Procedure and local Rules of Court.

8. As a result of Plaintiffs' failure to provide responses to discovery requests and self-executing disclosure statement, Defendant Lucent Technologies, Inc. has been forced to incur expenses and counsel fees of \$300.00 for the filing and presentation of the within motion.

9. Fed.R.Civ.P. 37(b) empowers this Honorable Court to award reasonable expenses, including attorneys fees for presenting this Motion.

WHEREFORE, for the foregoing reasons, Defendant Lucent Technologies, Inc. respectfully requests that its Motion to Compel be granted and that an Order be entered directing Plaintiffs to provide full and complete responses to Defendant's Contentions Interrogatories, a response to Defendant's Request for Production of Documents and Plaintiffs' Self-Executing Disclosure Statement within ten (10) days or suffer sanctions as provided by the Federal Rules of Civil Procedure upon further application to this Honorable Court. Plaintiffs are also ordered to reimburse counsel for Defendant Lucent Technologies, Inc. in the amount of \$300.00 for expenses incurred in the preparation of this Motion.

**KELLY, McLAUGHLIN, FOSTER,
BRACAGLIA, DALY, TRABUCCO & WHITE, LLP**

**Thomas P. Bracaglia, Esquire
Attorney for Defendant Lucent Technologies, Inc.**

DATED: _____

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**GLEN D. SMALE and
CARLA J. SMALE, his wife**

v.

LUCENT TECHNOLOGIES, INC.

:
:
:
:
:
:
:

CIVIL ACTION

NO. 02-CV-2721

ORDER

AND NOW, this day of , 2002, upon consideration of Defendant Lucent Technologies, Inc.'s Motion to Compel, and any response thereto, it is hereby **ORDERED** and **DECREED** that Defendant's Motion is granted and:

- (1) Plaintiffs are hereby ordered to provide full and complete responses to Defendant's Interrogatories and Request for Production of Documents within ten (10) days;
- (2) Plaintiffs are hereby ordered to provide their Self-Executing Disclosure Statement within ten (10) days; and
- (3) Plaintiffs are hereby ordered to reimburse counsel for Defendant Lucent Technologies, Inc. in the amount of \$300.00 for fees and expenses incurred in the preparation of its Motion to Compel.

BY THE COURT

, J.

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

GLEN D. SMALE and

:

CIVIL ACTION

CARLA J. SMALE, his wife

v.

LUCENT TECHNOLOGIES, INC.

:
:
:
:
:
:

NO. 02-CV-2721

**CERTIFICATION OF THOMAS P. BRACAGLIA, ESQUIRE
PURSUANT TO LOCAL RULE 26.1(f)**

Thomas P. Bracaglia, Esquire, counsel for Third Party Defendant hereby certifies that he attempted to resolve this discovery dispute by letter dated December 9, 2002 reminding Plaintiffs that their discovery responses were overdue and requesting that they be provided within three (3) weeks to avoid court intervention. A copy of that correspondence is attached. Despite these reasonable efforts, this dispute was unable to be resolved without court intervention.

Thomas P. Bracaglia, Esquire

DATED: _____